

REMARKS

In section 10a of the Office Action, the Examiner again rejected claims 1, 32, and 45 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claims 1 and 45 have been amended in accordance with the Examiner's suggestion to overcome the objection.

Claim 32 had previously been amended in accordance with the Examiner's suggestion to overcome the objection.

Claims 1, 32, and 45 comply with 35 U.S.C. §112, first paragraph.

In sections 11-23 of the Office Action, the Examiner rejected claim 1-4, 6-9, 17, 43, and 46 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard.

Applicants' Argument - Independent Claim 1 - Neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content.

In Figure 4A, Apfel discloses blocks 409 and 412 that require a manually initiated request for an update; and, in Figure 4B, Apfel discloses blocks 439 and

442 that require a manually initiated download of the update.

Apfel does state at column 11, lines 49-59 that, alternatively, the request may be initiated entirely in the background without a dialog box being displayed to the user. This portion further indicates that an HTTP query may automatically be initiated in the background, and that, if the query fails, there will be no action and the user will not even know that the query had been initiated. Finally, this portion indicates that, if the query is successful such that a new version is available, the user will be then prompted to apply the update.

In other words, blocks 409 and 412 in Figure 4A may be dispensed with in this alternative, but blocks 439 and 442 in Figure 4B are retained. Accordingly, although the initiation of the request is automatic, the receipt is still manual.

As to Ballard, the entire search is manual rather than automatic.

Accordingly, because neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content as required by independent

claim 1, one of ordinary skill in the art would not have combined Apfel and Ballard so as to produce the invention of independent claim 1.

For this reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

Moreover, Apfel describes downloading software updates to a user's computer. These software updates are executable code. No one at the time of the present invention or even today downloads executable code without giving the user the choice as to whether the user wants the download. Therefore, assuming that the user's computer is configured to automatically initiate a software download as argued by the Examiner, those skilled in the art will recognize that the final manual check of blocks 439 and 442 (Apfel; Figure 4B) should still be retained to prevent the user's computer from automatically downloading executable software (such as a virus) that could injure the computer and/or the user.

Accordingly, Apfel does not suggest automatic download of the updates and, in fact, suggests just the opposite.

Ballard similarly does not suggest automatic download of content.

Accordingly, one skilled in the art would not have been led to the invention of independent claim 1 by Apfel and instead would have been led away from the invention of independent claim 1.

Ballard similarly does not suggest automatic download of content.

Accordingly, one skilled in the art would not have been led to the invention of independent claim 1 by Ballard with or without Apfel.

For this further reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

In section 5 of the Office Action, the Examiner argues that Apfel teaches automatically receiving content. Applicant disagrees. Apfel does not teach dispensing with blocks 439 and 442. Therefore, the user must at blocks 439 and 442 execute a manual instruction to begin receiving of the software at blocks 448-454. The use of a manual instruction to begin the download is not automatic download.

Moreover, as pointed out above, the automatic download of software is just not done because the user must always be given the chance of rejecting the download.

In section 6 of the Office Action, the Examiner argues for a broad interpretation of "without user intervention." While the USPTO takes the position that it is entitled to interpret claims broadly, even the USPTO recognizes that the interpretation must be reasonable. In the present case, the Examiner's interpretation is not reasonable.

For example, the Examiner states that automatic operation does not really mean automatic operation, and that automatic operation can instead involve a manual step. However, an operation involving a manual step is a manual operation.

Moreover, while a computer may execute several software tasks in response to a single user instruction, execution of the software is not automatic because such execution requires intervention by the user, i.e., the manually inputted instruction to begin execution. Because manual intervention is required, execution of the software is not automatic.

To underscore the unreasonableness of the Examiner's interpretation, the Examiner argues that an automatically initiated request for content can involve the user manually inputting a web site address during the automatically initiated request. However, such an

argument is self-defeating. Manually inputting a web site address is the antithesis of an automatically initiating a request.

Also, the Examiner's interpretation ignores the fact that, once the web address is entered, the user must then execute a manual "go" instruction. Otherwise, the computer will not know when the user has finished entering the web address. Such an instruction is a further manual input that puts even more distance between the Examiner's example and an execution that does not require user intervention.

The Examiner ends this section of the Office Action by asserting that independent claim 1 must clearly state where automation begins and automation begins. Independent 1 does, and even goes further. Independent claim 1 recites that manual intervention ends at start up of the computer and automation proceeds from start up to receipt of content. Specifically, independent claim 1 recites that, following start up of the network enabled device, no user intervention is required to request and obtain content at the network enabled device from a content provider.

By contrast, following start up of the user's computer in Apfel, intervention by the user is required

at least at blocks 439 and 442 in order to receive content at the user's computer. Therefore, Apfel does not disclose the invention of independent claim 1.

Therefore, since Ballard likewise does not disclose automatically initiating a request for the posted content, automatically receiving the posted content, and automatically displaying a notice that the posted content has been received, one of ordinary skill in art would not have been led by Apfel and Ballard to the invention of independent claim 1.

Accordingly, independent claim 1 is not unpatentable over Apfel in view of Ballard.

Because independent claim 1 is not unpatentable over Apfel in view of Ballard, dependent claims 2-4, 6-9, and 17 are likewise not unpatentable over Apfel in view of Ballard.

In sections 24-27 of the Office Action, the Examiner rejected claims 12, 13, 15, and 16 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard and further in view of Stephens.

Stephens does not make up for the deficiencies of Apfel and Ballard with regard to independent claim 1. Therefore, independent claim 1 is patentable over Apfel in view of Ballard and further in view of Stephens.

Because independent claim 1 is patentable over Apfel in view of Ballard and further in view of Stephens, dependent claims 12, 13, 15, and 16 are *per force* patentable over Apfel in view of Ballard and further in view of Stephens.

In section 28 of the Office Action, the Examiner rejected claim 14 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda.

Beyda does not make up for the deficiencies of Apfel, Ballard, and Stephens with regard to independent claim 1. Therefore, independent claim 1 is patentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda. Because independent claim 1 is patentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda, dependent claim 14 is *per force* patentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda.

In sections 29-38 of the Office Action, the Examiner rejected claims 18, 19, 26, 28-31, 44, and 47 under 35 U.S.C. §103(a) as being unpatentable over Apfel.

Applicant's Argument - Independent Claim 18 -

According to independent claim 18, a request for the download of a graphical content element of a web page posted by a content provider is automatically initiated, and only the graphical element is received in response to the request without receiving the whole web page.

Apfel does not disclose that software upgrades are graphical elements of a web page or that graphical elements of a web page are downloaded without downloading the entire web page.

Moreover, Apfel does not even disclose or suggest that the software that is downloaded to the user's computer is any kind of element of a web page. Nor does the Examiner assert that the software downloaded to the user's computer is an element of a web page.

Applicants suppose that the Examiner might argue that a web page in the Apfel system would be provided to offer software to users and that such a web page would contain links to the software being offered so that users could select the software that they want to download. However, even in this case, the software itself is not an element of the web page. Moreover, while the link is arguably an element of the web page, there is no disclosure in Apfel that the link is

downloaded to the user's computer absent the web page as would be required by independent claim 18.

In view of the above, the Examiner argument regarding the download of viewable content is not pertinent.

In section 7 of the Office Action, the Examiner asserts that the simple download of a web page meets independent claim 18. However, this assertion is directly contrary to the limitations of independent claim 18, which requires the download of the element but not the web page.

For these reasons also, independent claim 18 is not unpatentable over Apfel.

Because independent claim 18 is not unpatentable over Apfel, dependent claims 19, 26, 28-31, and 47 likewise are not unpatentable over Apfel.

In sections 40 and 41 of the Office Action, the Examiner rejected claim 22 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard.

Ballard does not make up for the deficiencies of Apfel with regard to independent claim 18. Therefore, independent claim 18 is patentable over Apfel in view of Ballard. Because independent claim 18 is patentable over

Apfel in view of Ballard, dependent claim 22 is *per force* patentable over Apfel in view of Ballard.

In sections 42-45 of the Office Action, the Examiner rejected claims 20, 21, 24, and 25 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Stephens.

Stephens does not make up for the deficiencies of Apfel with regard to independent claim 18. Therefore, independent claim 18 is patentable over Apfel in view of Stephens. Because independent claim 18 is patentable over Apfel in view of Stephens, dependent claims 20, 21, 24, and 25 are *per force* patentable over Apfel in view of Stephens.

In section 46 of the Office Action, the Examiner rejected claim 23 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Beyda.

Beyda does not make up for the deficiencies of Apfel with regard to independent claim 18. Therefore, independent claim 18 is patentable over Apfel in view of Beyda. Because independent claim 18 is patentable over Apfel in view of Beyda, dependent claim 23 is *per force* patentable over Apfel in view of Beyda.

In sections 47-55 of the Office Action, the Examiner rejected claims 32-34, 40, 41, 45, and 48 under 35 U.S.C. §102(b) as being anticipated by Apfel.

Applicants' Argument - Independent claim 32 - The Examiner asserts that electronically receiving software code that permits the download of software updates is inherently performed in the system of Apfel. Applicant disagrees.

Independent claim 32 recites that the software that initiates the automatic receiving of the content is electronically received. Thus, to meet the limitations of independent claim 32, it is the software of Figures 4A and 4B of Apfel that must be electronically received. However, while the update software that is retrieved by the software of Figures 4A and 4B of Apfel is electronically retrieved, there is no disclosure in Apfel that the software of Figures 4A and 4B of Apfel is itself electronically received. Nor is it inherent that the software of Figures 4A and 4B of Apfel is itself electronically received since most software is not downloaded electronically but rather is carried to the recipient on a disk and is loaded from the disk.

In section 8 of the Office Action, the Examiner reasserts the inherent download argument. However, the

burden of showing inherent disclosure is a heavy one and is easily refuted where there are significant alternatives to that whose disclosure is argued to be inherent. Applicants above have refuted the Examiner's inherent disclosure argument.

Accordingly, independent claim 32 is not anticipated by Apfel.

Because independent claim 32 is not anticipated by Apfel, dependent claims 33, 34, 40, 41, and 45 are not anticipated by Apfel.

Applicants' Argument - Independent claim 45 -
Apfel in Figures 4A and 4B discloses that the user at blocks 439 and 442 must elect either to proceed with the download of the update or to terminate the update process entirely. Accordingly, this election requires a manual operation and, therefore, cannot be automatic.

In section 9 of the Office Action, the Examiner reasserts the automatic download arguments. Applicants accordingly reassert their above rebuttals to the Examiner's arguments.

Accordingly, independent claim 45 is not anticipated by Apfel.

In sections 56-60 of the Office Action, the Examiner rejected claims 36-39 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Stephens.

Stephens does not make up for the deficiencies of Apfel with regard to independent claim 32. Therefore, independent claim 32 is patentable over Apfel in view of Stephens. Because independent claim 32 is patentable over Apfel in view of Stephens, dependent claims 36-39 are *per force* patentable over Apfel in view of Stephens.

CONCLUSION

In view of the above, it is clear that the claims of the present application patentably distinguish over the art applied by the Examiner. Accordingly, allowance of these claims and issuance of the above captioned patent application are respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required, or to credit any overpayment, to account No. 50-1519.

Respectfully submitted,

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